

United States of America DEPARTMENT OF COMMERCE	DEPARTMENT ADMINISTRATIVE ORDER 202-955	
DEPARTMENT ADMINISTRATIVE ORDER SERIES	DATE OF ISSUANCE March 29, 2000	EFFECTIVE DATE March 28, 2000
SUBJECT ALLEGATIONS OF HARASSMENT PROHIBITED BY FEDERAL LAW		
<p><u>SECTION 1. PURPOSE.</u></p> <p>The purpose of this Order is to provide guidance to managers and supervisors in taking action on incidents or allegations of harassment prohibited by Federal law, i.e., harassment based on sex, race, color, national origin, age, religion, disability or reprisal. Harassment targeted at any individual or group will not be tolerated by the Department, and similarly employees must feel free to report such conduct without fear of retaliation. It also provides a quick, effective procedure to encourage employees to come forward with harassment allegations. The procedures established in this Order are distinct from the equal employment opportunity (EEO) programs of the Department. This Order provides an expedited process for reviewing allegations of harassment, terminating actual incidents of harassment, and taking disciplinary actions as appropriate, while the EEO complaint process is focused on providing remedial relief to the employee affected by the discrimination.</p> <p><u>SECTION 2. BACKGROUND.</u></p> <p>.01 Operating units and Departmental offices are responsible for maintaining a work place free of prohibited discrimination. As part of this responsibility, supervisors and managers are responsible for addressing and correcting employee misconduct. Prohibited harassment involves employee conduct which should be immediately addressed and corrected by the appropriate authority within the operating unit or Departmental office.</p> <p>.02 Employees have recourse to several forums when they believe that the appropriate manager or supervisor has not effectively addressed such allegations. The allegations or incidents covered in this Order are such that immediate appropriate action by the appropriate manager or supervisor to resolve such matters is mandatory without regard to which forum an employee selects in pursuing an allegation. Failure of managers and supervisors to address allegations of harassment will almost always result in serious consequences for the Department.</p> <p><u>SECTION 3. SCOPE.</u></p> <p>This Order covers incidents or allegations of employee misconduct involving harassment prohibited by Federal law, whether ongoing or completed that normally would require the Department to initiate disciplinary action against the offending party. The conduct covered by this DAO involves:</p>		

- a. the targeting of an employee for harassment because of his/her sex (this includes harassment which is not necessarily sexual in nature) or other protected status;
- b. a pattern of pervasive harassment in the work unit including unwelcome behavior towards an individual or individuals which has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive work environment; or
- c. a single incident of prohibited harassment of such a serious nature that the continued effective functioning of the unit will be impacted.

SECTION 4. LABOR RELATIONS OBLIGATIONS.

Organizations whose employees are represented by labor unions need to ensure that any provisions of their collective bargaining agreements pertaining to this subject are adhered to.

SECTION 5. PROCEDURES.

.01 Employee Responsibility For Reporting Allegations of Prohibited Harassment

- a. Employees are strongly encouraged to report any incident they perceive to be prohibited harassment, to include incidents personally experienced and those witnessed. They may either report it to their immediate supervisor, a higher level supervisor or to their servicing human resources officer as soon as the incident occurs.
- b. To the extent possible, the Department will protect the confidentiality of employees who make prohibited harassment reports. However, the Department cannot guarantee complete confidentiality, since it cannot conduct an effective inquiry without revealing certain information to the alleged harasser and potential witnesses. The Department is committed to ensuring that the allegation of harassment is shared only with those who have a need to know.
- c. Employees who make reports of prohibited harassment or provide information related to such reports will be protected from retaliation.
- d. All reports of prohibited harassment when reported to or received by the servicing human resources office will be promptly evaluated to determine if they come within the scope of this DAO. If the report involves co-worker misconduct and the human resources office determines it has already been resolved by the supervisor taking prompt remedial action upon learning of the harassment, no inquiry will be required. Those reports which fall within the scope will be thoroughly and impartially reviewed in accordance with the procedures in this DAO.

.02 Management's Responsibility For Reporting Allegations of Prohibited Harassment.

- a. A manager or supervisor who receives an allegation of prohibited harassment from an employee must immediately report the allegation, in writing, to the servicing human resources officer. Failure by the manager or supervisor to report the allegation could result in disciplinary or adverse action against the manager or supervisor for failure to adhere to the provisions of this DAO.

b. In all cases, the manager or supervisor to whom the incident is reported, must inform the employee of his or her right to seek counseling from the servicing Equal Employment Opportunity Officer or from the Office of Civil Rights. The employee should be informed that all counseling contacts must occur within 45 days from the date of the alleged harassing event.

c. In some instances, an employee may request that a manager or supervisor keep the employee's allegations of prohibited harassment confidential.

1. In such an instance, the manager or supervisor is obligated to inform the head of the servicing human resources office of the allegations and of the request for confidentiality, and must inform the employee of this obligation.

2. Where the employee requests confidentiality, the responsible manager or supervisor must provide a written statement to the employee indicating that any inquiry and action will be very limited if anonymity is required. Any such statement should be coordinated with the servicing human resources office.

03. Incidents Where Facts Are Known and Not in Dispute. Employees may allege, or managers and supervisors may become aware of, incidents of prohibited harassment where the facts are not in dispute, i.e., where all parties admit the allegations are true. In such situations, corrective action, including stopping any ongoing harassment and initiating disciplinary or adverse action, if appropriate, should be taken immediately in consultation with the servicing human resources office. In all cases, human resources offices are responsible for coordinating with the Office of the General Counsel to ensure that enough facts are known to proceed with corrective action. If disciplinary or adverse action is taken, it must proceed in accordance with DAO 202-751, Discipline, or 5 U.S.C. Chapter 75 and 5 C.F.R. Part 752. Corrective actions may include an oral warning or written reprimand if the misconduct was isolated and minor. If the misconduct was severe or pervasive, then reassignment, suspension, demotion or removal may be appropriate.

.04 Incidents Where Facts Are in Dispute. If a determination of validity of the report of harassment cannot be made, or not enough facts are known to proceed with corrective action, the responsible manager or supervisor must immediately provide in writing to the servicing human resources officer a summary of the allegations of harassment. The human resources officer, where appropriate, will select someone to conduct an inquiry. The servicing human resources office will provide advice and assistance to the official conducting the inquiry. Where the allegations concern the employee's direct or first-line supervisor or a co-worker in the unit, consideration should be given to undertaking immediate measures before completing the inquiry to ensure that the opportunity for additional actual or perceived harassment does not occur. Examples of such measures are:

a. making scheduling changes so as to avoid contact between the parties; and using all available tools to separate the parties, including temporary transfers of the supervisor or coworker or placing the supervisor or coworker on non-disciplinary leave with pay pending the conclusion of the inquiry; or

b. having the employee report to an alternative supervisor or manager while the inquiry is being conducted, if the employee agrees that this should be done. Such an offer to the employee should be made only after consultation with the servicing human resources office and the Office of General Counsel.

.05 Procedures for Conducting an Inquiry. The inquiry must result in a record sufficient to support any corrective and/or disciplinary action taken, or to indicate that there is not sufficient evidence to support corrective and/or disciplinary action. The cost of the inquiry, if any, shall be borne by the organization to which the employee who is the alleged harasser is assigned.

a. The person selected to perform the inquiry must be appropriately authorized to conduct the inquiry and shall take signed, sworn, statements from the employee who has alleged harassment, from the employee against whom the allegations are made, and from all principal witnesses.

b. The person conducting the inquiry shall coordinate with the servicing human resources office to ensure all labor relations obligations are met in conducting the inquiry.

c. The following process should be followed in the course of the inquiry:

1. Confirm the name, position and supervisory chain of the employee;

2. Identify the alleged misconduct and the names of those parties allegedly responsible for the conduct;

3. Obtain from the employee a detailed account of the alleged harassing actions/comments including, a description of the alleged actions/comments, the dates, times and locations of the alleged actions/comments as well as the names of any witnesses to, or persons with knowledge of, the alleged actions/comments.

4. With regard to allegations of sexual harassment, determine specifically whether the employee is claiming that someone has made and/or carried out any threats or promises regarding the employee's terms and conditions of employment.

5. Obtain from those accused of the misconduct a detailed response to each of the employee's allegations, as well as the names of witnesses who can corroborate the accused's account of events.

6. Obtain verification from all witnesses listed by the employee and the accused of what they witnessed with regard to the alleged misconduct.

7. Inform all interviewees about the prohibition forbidding retaliation against the employee who reported the alleged harassment.

8. When the inquiry is completed, the findings should be shared with the head of the servicing human resources office, who along with the person conducting the inquiry will determine, if possible, whether the alleged actions occurred. The head of the servicing human resources office will share these findings with appropriate management officials in the organizations to which the alleged harasser and the employee who is the subject of the alleged harassment are assigned. The servicing human resources office will also share the findings with the Office of the General Counsel, in order to receive their guidance on appropriate resolution of the matter.

9. In all instances, the inquiry will be completed and the findings communicated to the employee who was the subject of the alleged harassment. If the inquiry establishes that immediate and appropriate corrective action, including discipline is warranted, those for whom disciplinary or adverse action has been proposed will be provided a copy of the inquiry as part of the disciplinary process.

.06 Where an Inquiry Results in a Finding that Misconduct Has Occurred. In such situations corrective action, including stopping any ongoing harassment and initiating disciplinary or adverse action if appropriate, should be immediately taken in consultation with the servicing human resources office and the Office of General Counsel. The servicing human resources office shall maintain a record of all inquiries conducted in accordance with this Order which result in disciplinary or adverse action. This record shall be maintained in the appropriate disciplinary or adverse action case file in accordance with established guidelines. This requirement does not affect any other record keeping requirement that may apply to inquiries conducted in accordance with this Order.

SECTION 6. RESPONSIBILITIES.

.01 Reporting to the Office of Inspector General. Department officials and employees are not required to report evidence of individual harassment to the Office of Inspector General. If, however, there is evidence of a pattern of harassment discrimination within an operating unit or Departmental office, that evidence should be reported to the Office of Inspector General in accordance with DAO 207-10. Reporting evidence of a pattern of harassment to the Office of Inspector General does not relieve the operating unit or Departmental Office of the obligation to identify and correct the situation. In appropriate cases, the Office of Inspector General will advise the operating unit or Departmental office if its proposed actions could interfere with OIG proceedings.

02. EEO Counseling and Formal EEO Complaints.

a. An employee, at anytime, has access to an EEO Counselor and may file a formal complaint of discrimination. Sometimes managers or supervisors are not aware of an allegation of prohibited harassment until approached by an EEO Counselor. Once informed by an EEO Counselor that there is an allegation of prohibited harassment by an employee, the manager or

supervisor must immediately contact the servicing human resources officer about the allegations. The EEO Counselor will assist management and employees in resolving allegations but is not authorized to conduct inquiries into employee misconduct. The EEO Counselor, with the consent of the employee, may extend the informal EEO counseling process for an additional 30 days until the process established in this Order has been completed, i.e., when the operating unit or Departmental office agrees to conduct an inquiry and, if appropriate, take corrective action. Where an employee files a formal EEO complaint regarding prohibited harassment, a copy of any inquiry done by the Department, pursuant to this DAO, will be forwarded to the Office of Civil Rights for inclusion in the Report of Investigation.

b. EEO complaints are filed against the employing operating unit or Departmental office; accordingly, the matter to be decided when complaints of prohibited harassment are adjudicated is whether the operating unit or Departmental office acted properly in maintaining a work place free of prohibited discrimination and how the operating unit or Departmental office addressed the particular allegation(s). In almost all instances the appropriate manager or supervisor will be informed of the allegation(s) either directly by the aggrieved employee or through the EEO Counseling process. Operating units or Departmental officials who are put on notice of allegations of prohibited harassment are responsible for acting in accordance with the requirements of this Order.

SECTION 7. DEPARTMENTAL COORDINATION.

Because of their potentially overlapping roles, the Office of Human Resources Management, the Office of the General Counsel, the Office of Civil Rights, the Office of Security, and the Office of Inspector General should communicate with each other when they receive an allegation of prohibited harassment.

SECTION 8. EFFECT ON OTHER ORDERS.

This Order supersedes Department Administrative Order 215-8, dated June 23, 1992.

/s/ Debra M. Tomcheck

Director for Human Resources Management

Approved:

/s/ Raul Perea-Henze, for

Chief Financial Officer and Assistant
Secretary for Administration